



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1932 (Patron – Marshall, D.W.)

LD #: 11100967

Date: 12/29/2010

Topic: Creation of a Domestic Abuser Registry

Fiscal Impact Summary:

<ul style="list-style-type: none"> • State Adult Correctional Facilities: \$3,085,510 (114 beds) • Local Adult Correctional Facilities: \$1,224,351 (116 beds) • Adult Community Corrections Programs: Cannot be determined 	<ul style="list-style-type: none"> • Juvenile Correctional Centers: None (\$0) • Juvenile Detention Facilities: None (\$0)
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Summary of Proposed Legislation:

The proposal adds § 9.1-1302 to the *Code of Virginia* relating to the creation of a Domestic Abuser Registry. Under the proposal, a “domestic abuser” is defined as an adult who has been convicted of a violation of § 16.1-253.2 (violation of a protective order, assault with serious injury to a person covered by a protective order, or entering the home of a person covered by a protective order), §18.2-57.2 (assault and battery of a family or household member), § 18.2-60.4 (violation of a stalking protective order), or a substantially similar law of another state or of the United States.

Under the proposal a domestic abuser who is physically within the boundaries of the Commonwealth for more than 10 consecutive days must register in person, before the end of the eleventh day, with the sheriff of the locality where he resides or is located. In addition, any previously registered domestic abuser would be required to reregister with the sheriff no later than 10 days after moving to a new location within the Commonwealth. The domestic abuser would then be required to renew his registration in person at the sheriff’s office on or before December 31 of each subsequent calendar year for a period of 15 years. Under the proposal, intentionally or knowingly failing to comply with the registration requirements would be punishable as a Class 6 felony.

The proposed legislation would require the domestic abuser to provide to the sheriff his legal name, date of birth, social security number, etc., upon registering, as well as a photograph, a complete set of fingerprints, and a description of any tattoos, scars, etc. Furthermore, under the proposal the sheriff would be required 1) to maintain a local registry with the information of all domestic abusers in his jurisdiction, 2) to provide every residence, school, and business within a half-mile radius of the defendant’s residence the registration information of the domestic abuser, with the exception of his social security number, and 3) to forward all registry information to the State Police. Furthermore, State Police would be required to maintain a central registry of domestic abusers, provide the information (with the exception of social security numbers) to the public on their website, etc., and maintain the records for the duration of the 15-year period in which the domestic abuser is required to register.

Currently, the only other crimes in Virginia for which offenders must register are sex offenses and certain crimes against minors, specifically those listed under § 9.1-902. Offenders who are required to register with the Sex Offender and Crimes Against Minors Registry are assigned to one of two categories based on the offense for which they have been convicted. Offenders who have been convicted of a sexually violent offense as defined in § 9.1-902 comprise the majority of offenders who must register. Sexually violent offenders are required to register more frequently and, per § 18.2-472.1, are subject to higher penalties for violating registration procedures. For a sexually violent offender, it is a Class 6 felony to violate Registry requirements, while any second or subsequent violation is elevated to a Class 5 felony. Other sex offenders make up a smaller portion of those on the Registry. For these offenders, it is a Class 1 misdemeanor to violate Registry procedures, but a second or subsequent violation becomes a Class 6 felony.

Analysis:

Information is available regarding the number of offenders who are convicted of crimes that would qualify them as a “domestic abuser” as defined in the proposal and make them subject to the proposed registration requirements. This information is contained in the table below.

Offense for which Registration Would Be Required	Number of Offenders (FY2009 and FY2010)	Data Source
Assault and battery of family or household member - 3 rd or subsequent offense (felony) § 18.2-57.2	408	Sentencing Guidelines (SG) Data System
Assault and battery of a family or household member - 1 st or 2 nd offense (misdemeanor) § 18.2-57.2	5,130	Local Inmate Data System (LIDS)
Felony violation of protective order §16.1-253.2	41	Local Inmate Data System (LIDS)
Violation of protective order – 1 st offense (misdemeanor) § 16.1-253.2	1,105	Local Inmate Data System (LIDS)
Violation of protective order - 2 nd offense within 5 years, one involving violence (felony) § 16.1-253.2	34	Local Inmate Data System (LIDS)
Violation of a stalking protective order (misdemeanor) § 18.2-60.4	42	Local Inmate Data System (LIDS)
TOTAL	6,760	

Note: Offenders who had been convicted for more than one of the offenses listed above were categorized based on the more serious offense (based on statutory maximum penalty). Where there was more than one offense with the same statutory maximum penalty, assault offenses were categorized as more serious than violations of stalking protective orders, followed by other protective order violations).

The Local Inmate Data System (LIDS) contains information on persons held in local and regional jails in Virginia. LIDS does not capture information on offenders who were never booked into a jail.

According to fiscal year (FY) 2008 and FY2009 data from the Circuit Court Automated Information System (CAIS), 74 offenders (not defined as sexually violent per § 9.1-902) were convicted of a Class 6 felony for violating Sex Offender Registry requirements (§ 18.2-472.1). In these cases, the Registry violation was the primary (or most serious) offense at sentencing. While 57% of these offenders received a local-responsible (jail) sentence (for which the median sentence was six months), 35% did not receive an active term of incarceration to serve. For the remaining 8% of offenders who were given a state-responsible (prison) term, the median sentence was 1.8 years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it adds a new Class 6 felony to the *Code of Virginia*, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. If violations of the Domestic Abuser Registry are committed and result in conviction at the same rate as violations of Sex Offender Registry provisions (specifically among offenders not classified as “sexually violent”), the proposal would be expected to produce approximately 99 additional felony convictions in FY2012, with this figure increasing to 1,234 felony convictions in FY2017. If Domestic Abuser Registry violators are given sentences similar to those received for Class 6 felony violations of Sex Offender Registry provisions (specifically among offenders not classified as “sexually violent”), the impact is estimated to be 114 beds by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$3,085,510.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY12	FY13	FY14	FY15	FY16	FY17
1	15	39	66	90	114

Local adult correctional facilities. The proposal will also increase the future need for local-responsible (jail) beds. The impact is estimated to be an average of 116 beds by FY2017 (state costs: \$1,224,351; local costs: \$1,941,121).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY12	FY13	FY14	FY15	FY16	FY17
3	31	54	75	96	116

Adult community corrections programs. The proposal’s impact on adult community corrections resources cannot be determined.

Virginia’s sentencing guidelines. As a new felony, convictions under the proposed statute would not be covered by the sentencing guidelines when this crime is the primary (most serious) offense. Conviction for such an offense, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal will not increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not increase bed space needs in juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$3,085,510 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety’s Committee on Inmate Forecasting in 2010.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety’s Committee on Inmate Forecasting and approved in 2010.
3. Cost per prison bed was assumed to be \$27,065 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board’s FY2009 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.86 per day or \$10,541 per year. The local cost was calculated by using the daily expenditure cost of \$87.30 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$45.75 per day or \$16,712 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to offenders

1. The number of registrants in the Domestic Abuser Registry will begin with those convicted of the specified domestic abuse crimes or protective order violations under §§ 16.1-253.2, 18.2-57.2 and 18.2-60.4 on or after July 1, 2011. It was assumed that the same number individuals would be convicted under these provisions each year. The number of offenders on the Registry will grow. For offenders given a jail or prison sentence for the original domestic abuse conviction or protective order violation, it was assumed that they would not be added to the Registry until they had satisfied nearly all of the sentence and were approaching their release date.
2. The number of offenders convicted for Domestic Abuser Registry violations was estimated based on the rate at which offenders who are required to register with the state’s Sex Offender Registry (specifically those not classified as “sexually violent”) are convicted for violating their registration requirements. According to the State Police, there were 2,950 non-sexually violent registrants on the Sex Offender Registry as of December 1, 2010. During FY2010, there were 191 misdemeanor and 33 felony convictions under § 18.2-472.1 for Registry violations by non-sexually violent offenders. It was assumed that the rate of Domestic Abuser Registry violations resulting in conviction would be the same $((191+33)/2950 = 7.6\%)$. If registrants violate the conditions of the Domestic Abuser Registry at the same rate as those on the Sex Offender Registry, and these violations result in conviction at the same rate, the proposal is expected to produce approximately 99 additional felony convictions in FY2012, with this figure increasing to 1,234 additional felony convictions in FY2017.

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2011, is phased in to account for case processing time. Additional startup time (six months) was built into the simulation model’s case processing time to allow for the complexities and coordination of law enforcement resources.
2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for Domestic Abuser Registry violations would be similar to the distribution of sentences for Class 6 felony violations of Sex Offender Registry provisions among those offenders NOT defined as “sexually violent” per § 9.1-902.
3. Release dates were estimated based on the average rates at which inmates in Department of Corrections’ facilities were earning sentence credits as of December 31, 2009. For assault offenses, this rate was 10.9%.

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